

ENVIRONMENTAL COVENANT

This environmental covenant is established pursuant to 2005 Iowa Acts, Senate File 375 (SF 375) (to be codified as 2005 Iowa Code Supplement, chapter 455I). *[name(s) of fee title owners of affected property]*, hereafter "grantor(s)" and *[names of all holder/grantee(s)]* enter into this environmental covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions as specified and SF 375, the authorities granted the Iowa Department of Natural Resources (Department) in Iowa Code sections 455B.103(7) and 455B.474(1)"f" and Department rules in chapter 567 Iowa Administrative Code (IAC) 135.

1. Affected Property. The grantors as identified below are the fee title owners of property on which petroleum USTS exist [or formerly existed] and legally described as:

[legal description or reference as an exhibit] :

and locally known as (street address)

(hereafter "property").

[(alternative paragraph if the affected property is not the UST source property)]

Petroleum contamination associated with an underground storage tank site (UST) located at _____ (address), _____ (city), Iowa, and referenced by LUST NO. _____, has been evaluated under Department rules. Persons associated with the underground storage tank site have requested the grantor execute this environmental covenant in order to satisfy regulatory requirements applicable to the UST site]

2. Risk Management and Institutional Controls. . *[name of responsible party conducting the Tier 1/2 assessment]* has conducted a soil and groundwater investigation and risk assessment (tiered site assessment) of the property in accordance to Department rules in chapter 567 IAC 135. This assessment constitutes an environmental response project as defined in SF 375, section 6(5). Applying existing Department rules, this site assessment has identified soil or groundwater contaminant conditions on the property which may not pose an unreasonable risk to health, safety and the environment based on present land use but may present an unreasonable risk to health, safety and the environment unless certain future land use activities are limited and enforced as specified in this agreement. Iowa Code section 455B.474(1)"f" and Department rules in chapter 567 IAC 135 authorize the use of an environmental covenant as an institutional control. The purpose of this environmental covenant is to manage the risk of future exposure to existing contaminant conditions by limiting specified land use activities at this property, establishing affirmative obligations and enforcing the terms of this covenant. *[identify the name of the parties requesting classification decision]* wish to use this environmental

covenant as an institutional control in order to obtain a no action required classification [or if appropriate low risk classification] for the site or designated exposure pathways

3. Tiered Assessment Reports. Department files reference this property by UST No. [UST No] and LUST NO. [LUST No.]. *[identify by name, date and location of the appropriate Tier 1/2, SMR or other assessment report(s) which propose the risk classification and use of institutional controls and Department approval letters]*

4. Reopening. The signatories acknowledge that failure of these activity and use limitations to serve their intended purpose of preventing exposure to contamination on the property could result in the Department reopening its review and regulation of the contaminant condition on the property as provided under the terms of this covenant, SF 375, Iowa Code chapter 455B and applicable Department administrative rules.

5. Identity of Grantor(s) and Holder(s).

Grantor(s): *[Name of each fee title holder]*

HOLDERS: *[Name each of the person signing the covenant and describe their capacity, etc. The Department will be a "grantee", other person may include contract buyers, lessees, mortgage holders, municipalities, owners and operators of the UST site, other interested parties].*

6. Representations and Warranties. The grantor(s) warrant to the other signatories to this covenant the following:

- a. that the grantor[s] is [are] the sole fee title owner[s] of the property;
- b. that the grantor[s] hold[s] hold sufficient fee title to the property to grant the rights and interests described in this covenant free of any conflicting legal and equitable claims.
- c. that the grantor[s] has [have] identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lienholders, and lessees and secured their consent either by signatures on this covenant or by a separate subordination and consent agreement attached as Exhibit [] or recorded at []. *[consult Department guidance to assure that all contract buyers, mortgagees, lessees and other consensual lienholders either sign on to this instrument or sign a separate Department approved subordination and consent agreement]*

7. Running with the Land. This environmental covenant is perpetual and runs with the land as provided in SF 375 until modified or terminated as provided in paragraph []. The terms of this environmental covenant are binding on the grantors and all successors in interest, assigns and all transferees acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators, and devisees. The term "transferee," as used in this environmental covenant, shall mean any

future owner of any interest in the property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders, and/or lessees.

8. Activity and Use Limitations and Terms. The property is subject to the following use limitations and terms: *[describe specific restrictions, affirmative obligations, provisions regarding notice to the Department of breaches of the terms, periodic reporting requirements and persons with specific duties with reference to any guidance and model language developed by the Department]*

[discretionary provisions applicable to designated signatories, future fee title owners, contract buyers, lessees and other designated transferees of interests in the property. These may include provisions to establish affirmative obligations to notify the Department regarding changes in use, building permits, etc.]

9. Notice of Non-Compliance. Any signatory to this agreement *[discretionary provision]* *[and subsequent transferees of the property]* shall notify the Department as soon as possible of conditions that would constitute a breach of the activity and use limitations in paragraph eight (8).

10. Access to Property. Reasonable access to the property is granted the Department or any authorized representative of the Department, public or private. Access shall be granted to any private parties or their contractors which may be required by law or authorized by the Department, to conduct aboveground or subsurface investigation of the property. Access is also granted to *[name specific persons who are granted access rights]*. These activities may include but are not limited to repair and maintenance of remedial action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures, and fencing and other technological controls. To determine site conditions and compliance with the terms of this covenant, access may include groundwater sampling and monitoring, additional drilling and construction of soil borings and/or groundwater monitoring wells and other activities authorized or otherwise directed by the Department. The Department, its authorized representatives or other persons entitled to access shall provide the current owner of the property with reasonable notice, an explanation of the reasons for entry and the scope of onsite activities prior to access.

11. Groundwater Hazard Statement. Iowa Code section 558.69 requires submission of a groundwater hazard statement and notice if "hazardous waste" exists on the property as defined in Iowa Code sub-sections 455B.411(3), 455B.412(2) or section 455B.464. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with Department rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 shall make reference to this environmental covenant is substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE DEED OR OFFICIAL

RECORDS OF THE _____ COUNTY RECORDER ON _____, 200_, IN [DOCUMENT _____, or BOOK _____, PAGE _____, or by parcel number _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: *[Insert the language that describes the activity and use limitations exactly as it appears in the Environmental Covenant.]*

12. Modification and Termination. Modification or termination of the terms of this covenant shall comply with the standards in SF 375 and applicable Department administrative rules. The terms of this environmental covenant may be modified or terminated by written consent of the Director of the Department, the then current fee simple title owner, and all original signatories (unless exempted under the provisions of SF 375, section 14(1)(a) in accordance with and subject to the provisions of SF 375, section 14. The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this environmental covenant shall be as provided by SF 375, section 13 and such additional terms as specified in this covenant.

13. Enforcement. The terms of this environmental covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with SF 375, section 15. *[optional] In addition to persons authorized to enforce this covenant under SF 375, section 15, the signatories to this covenant may grant the following persons power to enforce the terms of this covenant: [name additional parties with enforcement power]*

14. Severability. If any provision of this environmental covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

16. Recordation. Within *[thirty (30)]* days after Department approval of this environmental covenant, grantor[s] shall record the environmental covenant in the same manner as a deed to the property, with the _____ County Recorder's Office.

17. Effective Date. The effective date of this environmental covenant shall be the date upon which the fully executed environmental covenant has been properly recorded with the _____ County Recorder.

18. Notice. Unless otherwise notified in writing by the Department, any document or communication required by this environmental covenant shall be submitted to:

[title or position]
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, IA 50319

19. Subordination and Consent. By signing this environmental covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interest in the property.

ACKNOWLEDGMENTS

[Acknowledgments in accordance with Iowa Code 558.20 and Iowa Code chapter 9E, and specific to individuals, partnerships, corporate entities, political subdivisions, etc.]

GRANTORS

[name of grantor]
GRANTOR

Dated this ____ day of _____, 2005

State of _____)
County of _____) ss.

On this ____ day of _____, 2005, before me personally appeared _____ and _____, who being duly sworn, did say that they are the corporation, that (the seal affixed to said instrument is the seal of said corporation or no seal has been procured by said corporation) and that the instrument was signed and sealed on behalf of said corporation by authority of its board of directors and that the said officers acknowledge the execution of said instrument to be the voluntary act and deed of said corporation by them voluntarily executed.

Notary Public, State of Iowa :

HOLDERS

Jeffery R. Vonk
Director, Iowa Department of Natural Resources

Signed this ____ day of _____, 2005.

State of _____)
County of _____) ss.

On this ____ day of _____, 2005, before me personally appeared

_____, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

_____,
Notary Public for State of Iowa

[insert signature blocks and appropriate acknowledgements for all other holders]

SUBORDINATED INTERESTS:

[insert signature blocks and appropriate acknowledgements for all subordinated interests]